



# Water Resources Act 1991

## 1991 CHAPTER 57

### PART III

#### CONTROL OF POLLUTION OF WATER RESOURCES

### CHAPTER II

#### POLLUTION OFFENCES

##### *Principal offences*

#### **85 Offences of polluting controlled waters.**

- (1) A person contravenes this section if he causes or knowingly permits any poisonous, noxious or polluting matter or any solid waste matter to enter any controlled waters.
- (2) A person contravenes this section if he causes or knowingly permits any matter, other than trade effluent or sewage effluent, to enter controlled waters by being discharged from a drain or sewer in contravention of a prohibition imposed under section 86 below.
- (3) A person contravenes this section if he causes or knowingly permits any trade effluent or sewage effluent to be discharged—
  - (a) into any controlled waters; or
  - (b) from land in England and Wales, through a pipe, into the sea outside the seaward limits of controlled waters.
- (4) A person contravenes this section if he causes or knowingly permits any trade effluent or sewage effluent to be discharged, in contravention of any prohibition imposed under section 86 below, from a building or from any fixed plant—
  - (a) on to or into any land; or
  - (b) into any waters of a lake or pond which are not inland freshwaters.

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- (5) A person contravenes this section if he causes or knowingly permits any matter whatever to enter any inland freshwaters so as to tend (either directly or in combination with other matter which he or another person causes or permits to enter those waters) to impede the proper flow of the waters in a manner leading, or likely to lead, to a substantial aggravation of—
- (a) pollution due to other causes; or
  - (b) the consequences of such pollution.
- (6) Subject to the following provisions of this Chapter, a person who contravenes this section or the conditions of any consent given under this Chapter for the purposes of this section shall be guilty of an offence and liable—
- (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000 or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

**Modifications etc. (not altering text)**

- C1** S. 85 restricted (13.4.2001) by [S.I. 2001/1478, reg. 3\(c\)](#)
- C2** S. 85 applied by [London Docklands Railway Act 1991 \(c. xxiii\), s. 7\(2\)\(a\)](#)
- C3** S. 85 applied (with modifications) (16.3.1992) by [Avon Weir Act 1992 \(c. v\), s. 18\(6\)](#) (with s. 61)
- C4** S. 85 applied (with modifications) (13.2.1992) by [British Railways Act 1992 \(c. i\), s. 18\(3\)\(a\)](#)
- C5** S. 85 applied (with modifications) (16.3.1992) by [London Underground Act 1992 \(c.iii\), s. 12\(2\)\(a\)](#)
- C6** S. 85 applied (with modifications) (16.3.1992) by [Aire and Calder Navigation Act 1992 \(c. iv\), s. 18\(4\)\(a\)](#)
- C7** S. 85 applied (with modifications) (18.6.1992) by [British Railways \(No. 2\) Act 1992 \(c. xi\), s. 22\(4\)\(a\)](#)
- C8** S. 85 amended (27.8.1993) by [1993 c. 12, ss. 40, 51\(2\), Sch. 3 Pt. 1 para.9](#) (with s. 46).
- C9** S. 85 applied (with modifications) (29.3.1993) by [1993 c. iv, s. 23\(4\)\(a\)](#) (with ss. 36, 41(5), 44(1)).
- C10** S. 85 applied (with modifications) (27.5.1993) by [1993 c. vii, s. 11\(2\)\(a\)](#) (with ss. 19(2), 29(1)).
- C11** S. 85 applied (with modifications) (1.7.1993) by [1993 c. ix, s. 9\(2\)\(a\)](#) (with ss. 15(2), 24(1)).
- C12** S. 85 applied (with modifications) (27.7.1993) by [1993 c. xv, s. 22\(3\)\(a\)](#) (with s. 44(1)).
- S. 85 applied (with modifications) (31.3.1994) by [1994 c. iv, s. 13\(4\)\(a\)](#)
- S. 85 applied (with modifications) (5.7.1994) by [1994 c. ix, s. 8\(2\)\(a\)](#)
- S. 85 applied (with modifications) (21.7.1994) by [1994 c. xi, s. 24\(3\)\(a\)](#)
- S. 85 applied (with modifications) (21.7.1994) by [1994 c. xv, s. 23\(3\)\(a\)](#)
- S. 85 applied (with modifications) (7.3.1995) by [S.I. 1995/519, art. 16\(5\)](#)
- S. 85 applied (with modifications) (28.7.1998) by [1998 c. iv, s. 22\(4\)\(a\)](#)
- C13** S. 85 modified (5.11.1993) by [1993 c.42, ss. 2, 19, Sch. 2 para. 10\(8\), Sch. 6 paras. 5, 8](#) (with s. 30(1), [Sch. 2 para. 9](#)).

**86 Prohibition of certain discharges by notice or regulations.**

- (1) For the purposes of section 85 above a discharge of any effluent or other matter is, in relation to any person, in contravention of a prohibition imposed under this section if, subject to the following provisions of this section—
- (a) the [<sup>F1</sup>Agency] has given that person notice prohibiting him from making or, as the case may be, continuing the discharge; or
  - (b) the [<sup>F1</sup>Agency] has given that person notice prohibiting him from making or, as the case may be, continuing the discharge unless specified conditions are observed, and those conditions are not observed.

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- (2) For the purposes of section 85 above a discharge of any effluent or other matter is also in contravention of a prohibition imposed under this section if the effluent or matter discharged—
- (a) contains a prescribed substance or a prescribed concentration of such a substance; or
  - (b) derives from a prescribed process or from a process involving the use of prescribed substances or the use of such substances in quantities which exceed the prescribed amounts.
- (3) Nothing in subsection (1) above shall authorise the giving of a notice for the purposes of that subsection in respect of discharges from a vessel; and nothing in any regulations made by virtue of subsection (2) above shall require any discharge from a vessel to be treated as a discharge in contravention of a prohibition imposed under this section.
- (4) A notice given for the purposes of subsection (1) above shall expire at such time as may be specified in the notice.
- (5) The time specified for the purposes of subsection (4) above shall not be before the end of the period of three months beginning with the day on which the notice is given, except in a case where the [<sup>F1</sup>Agency] is satisfied that there is an emergency which requires the prohibition in question to come into force at such time before the end of that period as may be so specified.
- (6) Where, in the case of such a notice for the purposes of subsection (1) above as (but for this subsection) would expire at a time at or after the end of the said period of three months, an application is made before that time for a consent under this Chapter in respect of the discharge to which the notice relates, that notice shall be deemed not to expire until the result of the application becomes final—
- (a) on the grant or withdrawal of the application;
  - (b) on the expiration, without the bringing of an appeal with respect to the decision on the application, of any period prescribed as the period within which any such appeal must be brought; or
  - (c) on the withdrawal or determination of any such appeal.

#### Textual Amendments

**F1** Words in s. 86 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

#### Modifications etc. (not altering text)

**C14** S. 86 applied (with modifications) (16.3.1992) by **Avon Weir Act 1992 (c. v), s. 18(6)** (with s. 61)

S. 86 applied (with modifications) (7.3.1995) by S.I. 1995/519, **art. 16(5)**

**C15** S. 86 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).

## 87 Discharges into and from public sewers etc.

[<sup>F2</sup>(1) This section applies for the purpose of determining liability where sewage effluent is discharged as mentioned in subsection (3) or (4) of section 85 above from any sewer or works (“the discharging sewer”) vested in a sewerage undertaker (“the discharging undertaker”).

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- (1A) If the discharging undertaker did not cause, or knowingly permit, the discharge it shall nevertheless be deemed to have caused the discharge if—
- (a) matter included in the discharge was received by it into the discharging sewer or any other sewer or works vested in it;
  - (b) it was bound (either unconditionally or subject to conditions which were observed) to receive that matter into that sewer or works; and
  - (c) subsection (1B) below does not apply.
- (1B) This subsection applies where the sewage effluent was, before being discharged from the discharging sewer, discharged through a main connection into that sewer or into any other sewer or works vested in the discharging undertaker by another sewerage undertaker (“the sending undertaker”) under an agreement having effect between the discharging undertaker and the sending undertaker under section 110A of the Water Industry Act 1991.
- (1C) Where subsection (1B) above applies, the sending undertaker shall be deemed to have caused the discharge if, although it did not cause, or knowingly permit, the sewage effluent to be discharged into the discharging sewer, or into any other sewer or works of the discharging undertaker—
- (a) matter included in the discharge was received by it into a sewer or works vested in it; and
  - (b) it was bound (either unconditionally or subject to conditions which were observed) to receive that matter into that sewer or works.]
- (2) A sewerage undertaker shall not be guilty of an offence under section 85 above by reason only of the fact that a discharge from a sewer or works vested in the undertaker contravenes conditions of a consent relating to the discharge if—
- (a) the contravention is attributable to a discharge which another person caused or permitted to be made into the sewer or works;
  - (b) the undertaker either was not bound to receive the discharge into the sewer or works or was bound to receive it there subject to conditions which were not observed; and
  - (c) the undertaker could not reasonably have been expected to prevent the discharge into the sewer or works.
- (3) A person shall not be guilty of an offence under section 85 above in respect of a discharge which he caused or permitted to be made into a sewer or works vested in a sewerage undertaker if the undertaker was bound to receive the discharge there either unconditionally or subject to conditions which were observed.
- [<sup>F3</sup>(4) In this section “main connection” has the same meaning as in section 110A of the Water Industry Act 1991.]

#### Textual Amendments

- F2** S. 87(1)(1A)(1B)(1C) substituted (1.7.1992) for s. 87(1) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 46(1)(3); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, dated 29th May 1992
- F3** S. 87(4) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 46(2)(3); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, dated 29 May 1992

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**Modifications etc. (not altering text)**

- C16** S. 87 applied (with modifications) (16.3.1992) by [Avon Weir Act 1992 \(c. v\), s. 18\(6\)](#) (with s. 61)  
S. 87 applied (with modifications) (7.3.1995) by [S.I. 1995/519, art. 16\(5\)](#)
- C17** [S. 87\(1\)](#) amended (27.8.1993) by [1993 c. 12, ss. 40, 51\(2\), Sch. 3 Pt. I para.9](#) (with s. 46).

**88 Defence to principal offences in respect of authorised discharges.**

- (1) Subject to the following provisions of this section, a person shall not be guilty of an offence under section 85 above in respect of the entry of any matter into any waters or any discharge if the entry occurs or the discharge is made under and in accordance with, or as a result of any act or omission under and in accordance with—
- (a) a consent given under this Chapter or under Part II of the <sup>M1</sup>Control of Pollution Act 1974 (which makes corresponding provision for Scotland);
  - [<sup>F4</sup>(aa) a permit granted, under regulations under section 2 of the Pollution Prevention and Control Act 1999, by an authority exercising functions under the regulations that are exercisable for the purpose of preventing or reducing emissions in to the air, water and land;]
  - (b) an authorisation for a prescribed process designated for central control granted under Part I of the <sup>M2</sup>Environmental Protection Act 1990;
  - (c) a waste management or disposal licence;
  - (d) a licence granted under Part II of the <sup>M3</sup>Food and Environment Protection Act 1985;
  - (e) section 163 below or section 165 of the <sup>M4</sup>Water Industry Act 1991 (discharges for works purposes);
  - (f) any local statutory provision or statutory order which expressly confers power to discharge effluent into water; or
  - (g) any prescribed enactment.
- (2) Schedule 10 to this Act shall have effect, subject to section 91 below, with respect to the making of applications for consents under this Chapter for the purposes of subsection (1)(a) above and with respect to the giving, revocation and modification of such consents.
- (3) Nothing in any disposal licence shall be treated for the purposes of subsection (1) above as authorising—
- (a) any such entry or discharge as is mentioned in subsections (2) to (4) of section 85 above; or
  - (b) any act or omission so far as it results in any such entry or discharge.
- (4) In this section—
- “disposal licence” means a licence issued in pursuance of section 5 of the Control of Pollution Act 1974;
- “statutory order” means—
- (a) any order under section 168 below or section 167 of the Water Industry Act 1991 (compulsory works orders); or
  - (b) any order, byelaw, scheme or award made under any other enactment, including an order or scheme confirmed by Parliament or brought into operation in accordance with special parliamentary procedure;

and

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“waste management licence” means such a licence granted under Part II of the the <sup>M5</sup>Environmental Protection Act 1990.

#### Textual Amendments

**F4** S. 88(1)(aa) inserted (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 para. 9**

#### Modifications etc. (not altering text)

**C18** S. 88 excluded (5.11.1993) by 1993 c. 42, ss. 2, 19, Sch. 2 para. 10(8), Sch. 6 paras. 5, 8 (with s. 30(1), Sch. 2 para. 9).

**C19** S. 88(1) applied (with modifications) (1.4.1999) by S.I. 1998/2746, reg. 14(2)

**C20** S. 88(2) amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).

#### Marginal Citations

**M1** 1974 c. 40.

**M2** 1990 c. 43.

**M3** 1985 c. 48.55.

**M4** 1991 c. 56.

**M5** 1990 c. 43.

## 89 Other defences to principal offences.

- (1) A person shall not be guilty of an offence under section 85 above in respect of the entry of any matter into any waters or any discharge if—
    - (a) the entry is caused or permitted, or the discharge is made, in an emergency in order to avoid danger to life or health;
    - (b) that person takes all such steps as are reasonably practicable in the circumstances for minimising the extent of the entry or discharge and of its polluting effects; and
    - (c) particulars of the entry or discharge are furnished to the [<sup>F5</sup>Agency] as soon as reasonably practicable after the entry occurs.
  - (2) A person shall not be guilty of an offence under section 85 above by reason of his causing or permitting any discharge of trade or sewage effluent from a vessel.
  - (3) A person shall not be guilty of an offence under section 85 above by reason only of his permitting water from an abandoned mine [<sup>F6</sup>or an abandoned part of a mine]to enter controlled waters.
- [<sup>F7</sup>(3A) Subsection (3) above shall not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.
- (3B) In determining for the purposes of subsection (3A) above whether a mine or part of a mine became abandoned before, on or after 31st December 1999 in a case where the mine or part has become abandoned on two or more occasions, of which—
- (a) at least one falls on or before that date, and
  - (b) at least one falls after that date,
- the mine or part shall be regarded as becoming abandoned after that date (but without prejudice to the operation of subsection (3) above in relation to that mine or part at, or in relation to, any time before the first of those occasions which falls after that date).

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- (3C) Where, immediately before a part of a mine becomes abandoned, that part is the only part of the mine not falling to be regarded as abandoned for the time being, the abandonment of that part shall not be regarded for the purposes of subsection (3A) or (3B) above as constituting the abandonment of the mine, but only of that part of it.]
- (4) A person shall not, otherwise than in respect of the entry of any poisonous, noxious or polluting matter into any controlled waters, be guilty of an offence under section 85 above by reason of his depositing the solid refuse of a mine or quarry on any land so that it falls or is carried into inland freshwaters if—
- (a) he deposits the refuse on the land with the consent of the [<sup>F5</sup>Agency];
  - (b) no other site for the deposit is reasonably practicable; and
  - (c) he takes all reasonably practicable steps to prevent the refuse from entering those inland freshwaters.
- (5) A highway authority or other person entitled to keep open a drain by virtue of section 100 of the <sup>M6</sup>Highways Act 1980 shall not be guilty of an offence under section 85 above by reason of his causing or permitting any discharge to be made from a drain kept open by virtue of that section unless the discharge is made in contravention of a prohibition imposed under section 86 above.
- (6) In this section “mine” and “quarry” have the same meanings as in the <sup>M7</sup>Mines and Quarries Act 1954.

#### Textual Amendments

- F5** Words in s. 89 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F6** Words in s. 89(3) inserted (subject to other provisions of the amending Act) (1.7.1998) by 1995 c. 25, **s. 60(1)** (with ss. 7(6), 115, 117); S.I. 1998/604, **art. 3**
- F7** S. 89(3A)-(3C) inserted (subject to other provisions of the amending Act) (1.7.1998) by 1995 c. 25, **s. 60(2)** (with ss. 7(6), 115, 117); S.I. 1998/604, **art. 3**

#### Marginal Citations

- M6** 1980 c. 66.
- M7** 1954 c. 70.

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**Changes to legislation:**

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